

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

IN RE:)
)
BELLE FOODS, LLC,) **Chapter 11**
) **Case No. 13-81963-11**
Debtor.)

AGREED SECOND INTERIM ORDER GRANTING USE OF CASH COLLATERAL

The Court, having been advised that Belle Foods, LLC, as debtor and debtor in possession (“Debtor”), and C&S Wholesale Grocers, Inc. (“C&S”), Southern Family Markets, LLC, for itself individually and as administrative agent (“SFM”, and together with C&S, the “Secured Lenders”) agree to the relief as set forth herein, after due deliberation and good and sufficient cause appearing therefore, it is hereby **ORDERED, ADJUDGED, and DECREED** that:

1. **Jurisdiction and Venue.** This Court has subject matter jurisdiction over these proceedings and property affected hereby under 28 U.S.C. § 1334. This proceeding is a core matter under 28 U.S.C. § 157(b). Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

2. **Necessity of Financing and Use of Cash Collateral.** Debtor acknowledges and stipulates that as of July 1, 2013 (the “Petition Date”), the Debtor was indebted to the Secured Lenders in an amount not less than \$34,609,449.00 (the “Secured Obligations”).¹ Debtor

¹ The Secured Obligations arise from and/or are evidenced by, without limitation, the following agreements: (i) that certain Asset Purchase Agreement dated February 3, 2012, by and between Debtor, the SFM and certain affiliates of SFM; (ii) that certain \$4,776,032 Purchase Money Promissory Note dated as of June 29, 2012, as amended by that certain Allonge to Purchase Money Promissory Note dated as of December 21, 2012, executed by Debtor in favor of certain affiliates of SFM; (iii) that certain Unitary Lease with Debtor, dated June 29, 2012, and that certain Intellectual Property License Agreement dated June 29, 2012; (iv) that certain Supply

acknowledges and stipulates that the Secured Lenders have a perfected prepetition security interest in substantially all of Debtor's assets (the "Collateral"), including cash and/or deposit accounts ("Cash Collateral"). Debtor's ability to finance its operations requires access to Collateral, including Cash Collateral, and Debtor's use of Cash Collateral is necessary to avoid immediate and irreparable harm to Debtor's estate. Debtor's authorization to use Cash Collateral pursuant to the Agreed Interim Order will expire as of 5:00 p.m. (Prevailing Central Time) on July 12, 2013. As such, Debtor and the Secured Lenders have jointly requested immediate entry of this Second Interim Order pursuant to Bankruptcy Rule 4001(b)(2).

3. **Interim Use Authorization.** Through and until 5:00 p.m. (Prevailing Central Time) on Monday, July 22 (the "Second Interim Period"), Debtor is authorized to use Cash Collateral to the extent that collected funds are available, provided that Debtor may only use Cash Collateral pursuant to the budget attached hereto as Exhibit "A" (the "Second Interim Budget"), as may be modified only with the written consent of the Secured Lenders, which consent may be provided or withheld in their sole discretion. For avoidance of doubt, Debtor is not permitted to use Cash Collateral for any purpose or in any amount in excess of which is set forth in the Second Interim Budget (subject to modification in as provided herein). Cash Collateral used during the Second Interim Period will be used only to fund Debtor's expenses in accordance with this Second Interim Order and the Second Interim Budget (subject to modification in as provided herein). Debtor is further authorized to use Cash Collateral to pay amounts payable pursuant to 29 U.S.C. §1930(a)(6) and any fees payable to the clerk of the

Agreement by and between C&S and Debtor, dated June 29, 2012; (v) that certain Transition Services Agreement, dated as of June 29, 2012, as amended by that certain First Amendment to Transition Services Agreement dated as of January 1, 2013; (vi) that certain Lease Agreement, dated as of June 29, 2012, by and between the Debtor and Birmingham Logistics LLC; (vii) that certain Loan Agreement dated June 29, 2012, by and between SFM and Debtor; (viii) that certain Allonge to Revolving Line of Credit Promissory Note and Loan Agreement dated June 22, 2013, by an between SFM and Debtor; and (ix) that certain Revolving Line of Credit Promissory Note dated as of June 19, 2012, by and between Debtor and SFM.

Court. All cash collected by Debtor during the Second Interim Period in excess of the cash needs set forth in the Second Interim Budget (the “Cash Needs”), shall be delivered by wire to the Secured Lender on July 22, 2013 by 4:00 p.m. (Prevailing Central Time).

4. **Reporting Requirements.** Not later than daily by 4:00 p.m. (Prevailing Central Time) during the term of this Second Interim Order, Debtor shall deliver to the Secured Lenders the following reports reflecting the prior day’s transactions: (i) a report showing all cash receipts (cash, credit cards, wire transfers, ACH credits, checks and any other credits to Debtor’s bank accounts), cash disbursements, accounts receivable and accounts payable for each store; (ii) statements from all bank accounts into which any Cash Collateral is deposited or disbursed; (iii) a list of outstanding checks reflecting amounts payable; (iv) a reconciliation, on a cash reporting basis, of actual costs incurred to costs as budgeted in the Interim Budget.; (v) a report showing daily sales for each operating store individually with a comparison to the daily sales of each such store in calendar year 2012; and (vi) all such other reports that the Secured Lenders may reasonably request from time to time.

5. **Records Inspection.** Debtor shall keep records of such a character as are reasonably calculated to enable the Secured Lenders to determine at any time the status of all Collateral, and shall permit the Secured Lenders, and their agents and employees, during regular business hours to inspect, audit, and make copies of all records and other papers in the possession, custody or control of Debtor pertaining to the Collateral in which the Secured Lenders have an interest, provided that such access shall not unreasonably interfere with Debtor’s business operations.

6. **Replacement Liens.** The Secured Lenders are granted security interests and replacement liens (collectively the “Adequate Protection Liens,”) upon all property of Debtor

(except for causes of actions under Chapter 5 of the Bankruptcy Code) whether arising prepetition or postpetition of any nature whatsoever, wherever located, to the same validity, extent, and priority of their prepetition security interest and liens as adequate protection for the diminution in value of their interests in the Collateral, including Cash Collateral, on account of Debtor's use of such Collateral (including Cash Collateral). None of the Adequate Protection Liens shall (i) be subject to any lien or security interest that is avoided and preserved for the benefit of the estates under Bankruptcy Code section 551, or (ii) subject to any inter-company claim, whether secured or unsecured, of any domestic or foreign subsidiary or affiliate of any Debtor. Furthermore, while this Interim Order is in effect, no other Order shall be entered that subordinates or makes *pari passu* the Adequate Protection Liens with any other lien or security interest under Bankruptcy Code sections 361, 363, or 364 or otherwise except as expressly provided in this Interim Order. The Adequate Protection Liens granted to the Secured Lenders pursuant to this Interim Order shall be valid and perfected effective as of the Petition Date without the need for the Secured Lenders to take any further action or make any further filing pursuant to the Uniform Commercial Code or other applicable law.

7. **Section 507(b) Superpriority Claim.** As adequate protection for the diminution in value of their interests in the Collateral (including Cash Collateral) on account of Debtor's use of such Collateral (including Cash Collateral) the Secured Lenders are hereby granted as and to the extent provided by Bankruptcy Code section 507(b) an allowed superpriority administrative expense claim in this case to the extent of any diminution in value of their interests in the Collateral; provided, however, that any superpriority administrative expense claim granted to the Secured Lenders pursuant to this paragraph shall be subject and subordinate to a carve-out for the payment of accrued and unpaid allowed professional fees and expenses of Debtor's

professionals to the extent of any existing retainers currently held by any such professionals, and to the extent of any line items in the Second Interim Budget for any professional fees.

8. **Additional Adequate Protection.** As further adequate protection for the diminution in value of their interests in the Collateral, including Cash Collateral, on account of Debtor's use of such Collateral (including Cash Collateral), Debtor is hereby authorized and directed to provide adequate protection to the Secured Lenders in the form of (a) immediate allowed setoffs by the Secured Lenders of cash or credits otherwise to be paid or credited to Debtor under that certain Supply Agreement, dated as of June 29, 2012, by and between C&S and Debtor (the "Supply Agreement"), including but not limited to, "Diverting Rebates", "Marketing Allowances" and reclamation program credits (as set forth in Section 8 of the Supply Agreement), whether such cash or credits were or are payable prior or subsequent to the Petition Date; and (b) daily payments of the proceeds designated as "Adequate Protection Payments" which represent proceeds from the sale or liquidation of Debtor's stores and/or inventory to be reconciled weekly, consistent with paragraph 24 the *Order (I) Authorizing and Approving (A) the Sale of Certain of Debtor's Assets Free and Clear of All Liens, Claims and Encumbrances, and (B) the Conducting of Store Closing or Similarly Themed Sales; (II) Approving the Agent Agreement and Authorizing Hilco Merchant Resources, LLC to Act as Debtor's Liquidation Agent; and (III) Granting Related Relief*, entered July 5, 2013 (Docket. No. 53) and, (c) periodic payments as provided in numbered paragraph 3 above, all cash in excess of Cash Needs. All Cash Collateral transfers by Debtor to the Secured Lenders as agreed to by Debtor and the Secured Lenders from the Petition Date through the expiration of this Second Interim Order not set forth in the Interim or Second Interim Budgets are hereby authorized and approved as additional adequate protection for the benefit of the Secured Lenders.

9. **Establishment of Cash Management Bank Accounts.** By no later than 5:00 p.m. (Prevailing Central Time) on Tuesday, July 16, 2013, Debtor shall establish bank accounts with a commercial bank, each account subject to an account control agreement naming the Secured Lenders as the secured parties for whose benefit the account control agreement is established, into which all cash held by Debtor prior to establishment of the accounts, and/or held thereafter or collected by Debtor shall be deposited. The commercial bank at which the accounts are established, and the form and content of the account control agreement, shall be subject to the approval and consent of the Secured Lenders in their sole discretion.

10. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims.**

Debtor's acknowledgements and stipulations set forth in this Second Interim Order (the "Debtor's Stipulations") above shall be binding upon the Debtor in all circumstances upon entry of this Second Interim Order. The Debtor's Stipulations shall be binding upon any other party in interest, including any official committee of unsecured creditors (the "Creditors' Committee") and any other official committee appointed in this case, if any, unless such Creditors' Committee or any other party in interest (including any chapter 11 trustee appointed in this case or any chapter 7 trustee in any successor case) other than the Debtor:

first, commences, by the earlier of (x) with respect to any Creditors' Committee, sixty (60) calendar days from the formation of any Creditors' Committee, and (y) solely if no Creditors' Committee is formed, with respect to all other parties in interest with requisite standing other than the Debtor or any Creditors' Committee, seventy-five (75) calendar days following the Petition Date (such time period established by the earlier to occur of clauses (x) and (y), shall

be referred to as the “Challenge Period,” and the date that is the next calendar day after the expiration of the Challenge Period in the event that either (i) no Challenge (as defined below) is properly commenced during the Challenge Period or (ii) with respect only to those parties who properly commence a Challenge (as defined below) during the Challenge Period, and such Challenge is fully and finally adjudicated, shall be referred to as the “Challenge Period Expiration Date”), (A) a contested matter, adversary proceeding, or other action or “claim” (as defined in the Bankruptcy Code) challenging or otherwise objecting to the admissions, stipulations, findings, or releases included in the Debtor’s Stipulations, or (B) a contested matter, adversary proceeding, or other action against any or all of the Secured Lenders (in any capacity) in connection with or related to (I) the Secured Obligations owed by the Debtor to any of the Secured Lenders, (II) the pre-petition business relationship between or conduct of any of the Secured Lenders with the Debtor, (III) the actions or inactions of any of the Secured Lenders arising out of or related to the Secured Obligations owed by the Debtor to any of the Secured Lenders or otherwise, (IV) any setoff, counterclaim, or defense to the Secured Obligations owed by the Debtor to any of the Secured Lenders (including, but not limited to, those under sections 506, 544, 547, 548, 549, 550, and/or 552 of the Bankruptcy Code) or (V) any avoidance of or challenge (whether pursuant to Chapter 5 of the Bankruptcy Code or otherwise) to any transfer made by or on behalf of the Debtor to or for the benefit of any of the Secured Lenders (but excluding, solely for the purpose of this Second Interim Order, those under section 506(c)) ((A) and (B) collectively, the “Challenges”

and, each individually, a “Challenge”), and;

second, obtains a final, non-appealable order in favor of such party in interest sustaining any such properly commenced Challenge in any such timely-filed contested matter, adversary proceeding, or other action;

Upon the Challenge Period Expiration Date and for all purposes in this case and any successor case(s):

all payments made to or for the benefit of the Secured Lenders pursuant to, or otherwise authorized by, this Second Interim Order or otherwise (whether made prior to, on, or after the Petition Date) shall be indefeasible and not be subject to claims, counterclaims, set-off, subordination, recharacterization, defenses, or avoidance;

any and all such Challenges shall be deemed to be forever released, waived, and barred;

the Secured Obligations owed by Debtor to any of the Secured Lenders shall be deemed to be a fully allowed secured claim (subject only to final calculation and reconciliation by the Secured Lenders) within the meaning of section 506 of the Bankruptcy Code; and

Debtor’s stipulations and acknowledgements contained herein shall be binding on all parties in interest, including any Creditors’ Committee, other official committee, or any trustee appointed in this chapter 11 case or any successor case.

11. **Remedies.** Upon a default by Debtor of this Interim Order, the Secured Lenders shall have the right to immediately petition the Court, with notice to counsel for Debtor and

counsel for any official committee appointed in this case, for relief from the automatic stay imposed under section 362(a) of the Bankruptcy Code in order to allow the Secured Lenders to exercise all available remedies, which request shall be heard by this Court on an expedited basis. For the avoidance of doubt, and without limitation, any expenditure, in kind or amount, not specifically provided for by the Interim Budget shall constitute an event of default of this Interim Order.

12. **Reservation of Rights**. Nothing contained herein shall in any manner waive or prejudice (i) the right of the Secured Lenders to seek additional adequate protection or a determination that the Secured Lenders are not adequately protected or (ii) any objection the Secured Lenders may make to any of the relief requested by Debtor other than the relief expressly granted in this Interim Order authorizing the use of Cash Collateral during the Interim Period.

13. **No Further Commitment**. Nothing in this Second Interim Order is or shall be deemed to be a commitment by the Secured Lenders to consent to the use of their Collateral, including Cash Collateral, other than during the Second Interim Period. Also, nothing in this Second Interim Order is or shall be deemed to be a commitment by the Secured Lenders to further provide financing, in any form, to Debtor during the pendency of this chapter 11 proceeding. Furthermore, nothing in this Second Interim Order, or the Secured Lenders' consent to the entry thereof, is or shall be deemed to be, evidence of any consent by the Secured Lenders to the use of the Collateral, including Cash Collateral, for any period of time subsequent to July 22, 2013.

14. **Survival of Interim Order.** The terms of this Interim Order shall survive entry of any order converting Debtor's case under Chapter 11 to Chapter 7 and any reconversion to Chapter 11.

DONE and ORDERED this day July 12, 2013

/s/ Jack Caddell
Jack Caddell
U.S. Bankruptcy Judge